IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.613 OF 2004
IN
ARBITRATION PETITION NO.37 OF 2004

A.C.Caremotor Pvt.Ltd. & anr. .. Appellants

v/s.

Niskalp Investments and Trading
Co.Ltd. & anr. ..Respondents

Mr.C.K.Rajan for appellants.

Mr. A.K.Mehta for respondent No.1.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 30th September, 2004

P.C.

Heard Mr.C.K.Rajan, the learned counsel for the appellants and perused the averments set out in the arbitration petition, reply affidavit and the impugned order.

2. The appellants are original respondent Nos.1 and 2. The first respondent is original petitioner and the second respondent herein is the original respondent No.3 in the arbitration petition.

3. The learned counsel for the appellants submitted that this court had no jurisdiction in the matter. We are not persuaded by the submission of the learned counsel. Firstly because no such argument seems to have been advanced before the

learned single Judge. Secondly, we find that in para 11 of the arbitration petition, it is specifically stated that the agreement dated 30th March, 2000 together with the personal guarantee of the respondent No.2 (appellant No.2 herein) was executed at Mumbai. The money under the loan agreement was advanced by the petitioner to the respondent No.1 (appellant No.1 herein) at Mumbai. In reply, there is no specific denial and what is stated is that the petitioner (present respondent No.1) be put to strict proof.

4. The learned counsel for the appellants then submitted that the learned single Judge erroneously recorded that the property was mortgaged as the security of loan. According to the learned counsel, the property was not mortgaged and even in the petition, there is no such case of the petitioner. The submission of the learned counsel for the appellant is devoid of substance. A careful reading of para 5 of the arbitration petition, prima facie, does lead to the inference that the land situated at village Marathakkara, Trichur and 12.5 acres of land situated at Palghat was mortgaged as security of the loan. As a matter of fact, in the reply affidavit, the present appellants denied that at any time they indicated their inability to create a mortgage in respect of the said properties.

4. All in all, we are satisfied that no case for interference in the impugned order is made out. Admittedly, the dispute between the parties has been referred to the Arbitrator and that the proceedings are going on before the Arbitrator.

5. Appeal is, accordingly, dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)